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# In Error.

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John Wilkes, Esquire, Plaintiff in Error.

Our Sovereign Lord the King, Defendant in Error.

## HOUSE of LORDS.

BETWEEN

*John Wilkes, Esquire,* Plaintiff in Error.

AND

*Our Sovereign Lord the King,* Defendant in Error.

On an Information for printing and publishing a seditious Libel, intituled,  
“The North Briton, N°: 45.”

Michaelmas  
Term 1763.  
Information  
filed.

**S**ir, the Attorney General (the Office of Attorney General being vacant), filed an Information, *Ex officio*, in his Majesty's Court of King's Bench, against *John Wilkes*, Esquire, the Plaintiff in Error; which Information states, that before the printing and publishing the seditious and scandalous Libel therein-after mentioned, to wit, on the 19th Day of April, in the Third Year of his present Majesty's Reign, his Majesty did make and deliver a most gracious Speech from his Throne, to the Purport and Effect therein set forth; and that the said *John Wilkes*, most audaciously, wickedly, and seditiously devising, and intending to vilify and traduce his Majesty, and his Government of this Realm; to impeach and disparage his Veracity and Honour; and to represent, and cause it to be believed, amongst his Majesty's Subjects, that his said most gracious Speech contained Falsities, and gross Impositions upon the Public; and that his Majesty had suffered the Honour of his Crown to be sunk, debased, and prostituted, and had given his Name as a Sanction to the most odious Measures of Government; and also, most wickedly, unlawfully, and seditiously devising, intending, and endeavouring, as far as in him the said *John Wilkes* lay, to excite Disobedience and Insurrections amongst the Subjects of this Realm, and to violate and disturb the public Tranquility, good Order, and Peace of this Kingdom; after the making and Delivery of the aforesaid Speech (that is to say) on the 2d Day of August, in the said Third Year of the Reign of our said Lord the King, unlawfully, wickedly, seditiously, and maliciously published, and caused to be printed and published, a certain malignant, seditious, and scandalous Book and Libel, intituled “The North Briton,” in one Part whereof, intituled, N° XLV. Saturday April 23d, 1763. were then and there contained (amongst other Things) divers malicious, seditious, and scandalous Matters, to the Effect in the said Information set forth.

2d Count.

There is a Second Count in the Information, charging that the aforesaid *John Wilkes* again most audaciously, wickedly, and seditiously devising, intending, and endeavouring to vilify and traduce his Majesty, and his Government of this Realm; to impeach, disparage, and defame his Veracity and Honour; and to represent, and cause it to be generally believed, amongst the Subjects of this Realm, that his Majesty had suffered the Honour of his Crown to be sunk and debased, and had prostituted his Name, in order to give a Sanction to the most odious Measures, and to the most unjustifiable Declarations from his Throne: And also most wickedly and seditiously devising and intending to excite amongst the Subjects of this Realm, a general Discontent and Disaffection to his Majesty's Government, and a Spirit of Disobedience to the Laws of this Realm, and maliciously to violate and disturb the public Peace, good Order, and Tranquillity of this Kingdom; after the Making and Delivery of the aforesaid Speech (that is to say) on the 2d Day of August aforesaid, unlawfully, wickedly, and seditiously published, and caused to be printed and published, a certain other malicious, seditious, and scandalous Libel, intituled, N° XLV. Saturday April 23, 1763; in which said last-mentioned Libel were contained, concerning his Majesty, and his aforesaid

aforesaid most gracious Speech, divers other malicious, seditious, and scandalous Matters, to the Effect in the said Information set forth.

Hilary Term following, Mr. Wilkes pleaded to the Information, Not Guilty; and Sir Fletcher Norton, then being his Majesty's Attorney General, joined Issue in that Character for his Majesty.

Sittings after same Term, The Cause was tried by a Special Jury of the County of Middlesex, when Mr. Wilkes, after a full and fair Trial, was convicted of the Offences charged in the Information.

Mr. Wilkes having withdrawn himself into Parts beyond the Seas, Proceedings to Outlawry were had against him, upon the above-mentioned Conviction; and,

On 1st Nov. 1764. Mr. Wilkes was outlawed; and

In Easter Term 1768, He was apprehended by the Sheriff of Middlesex, by virtue of a Writ of *Capias ut legatum*, and being brought into the Court of King's Bench, was committed to the Custody of the Marshal of that Court.

Same Term, Mr. Wilkes obtained a Writ of Error upon the Outlawry, and having assigned Errors thereon, the same were argued in that and the following Term.

Trinity Term following, The Court of King's Bench were pleased to reverse the Outlawry for a Defect of Form in the Return of the Sheriff to the Writ of Exigent.

Mr. Wilkes's Council having informed to the Court some Matters, which, if available, ought to have been moved in Arrest of Judgment, and for a new Trial, the Court relaxed their general Rule, requiring such Applications to be made within the First Four Days of the Term immediately following the Conviction, and indulged Mr. Wilkes with Leave to move now, as well in Arrest of Judgment, as for a new Trial.

The Ground of the Motion in Arrest of Judgment, was to the Information having been exhibited by the Solicitor General; and it was argued by the Council for Mr. Wilkes, that the Solicitor General was not the proper Officer, nor had any Authority, to exhibit an Information; and if he was vested with such Authority, it could only be temporary, during the Vacancy of the Office of Attorney General, and it did not appear by the Proceedings, that the Office of Attorney General was at that Time vacant.

The Application for a new Trial was founded upon an Objection to an Order made by the Lord Chief Justice of the Court of King's Bench, for amending the Information after Issue had been joined, and the Record of the Issue made up.

The Court, after Argument by Council, unanimously over-ruled both the Objections, and took Time to consider of their Judgment upon the Conviction.

17 June 1768. Mr. Wilkes being brought into Court to receive Judgment, was sentenced to pay a Fine of 500*l.* and to be imprisoned Ten Calendar Months in the Custody of the Marshal.

Mr. Wilkes hath brought a Writ of Error in Parliament upon the Judgment of the Court of King's Bench, and assigned the following Matters for Error:

1. That no Judgment ought to have been given against him.
2. That it does not appear that Sir Fletcher Norton, by whom the Information was exhibited, had any lawful Power, Warrant, or Authority to exhibit the said Information, and therefore the Judgment is not sufficient in Law to convict Mr. Wilkes, and to ground the aforesaid Judgment against him.
3. That there is a Variance between the Record and the original Information, consisting in this, that in the Record Mr. Wilkes is charged with having published, and caused to be printed and published, the respective Libels and Compositions therein specified, as respectively containing (amongst other Things) to the Tenor and Effect in the Record in that Behalf specified, whereas in the original Information he is charged with having published, and caused to be printed and published, the respective Libels and Compositions therein specified; and respectively containing, amongst other Things, to the Purport and Effect in the said original Information in that Behalf specified; and in order to verify this Error, Mr. Wilkes obtained a Writ of *Certiorari* to certify the original Information.

The Writ of *Certiorari* being returned, his Majesty's Attorney General rejoined to the Errors assigned, and humbly hopes that the Judgment of the Court of King's Bench shall be affirmed, for the following, amongst other Reasons.

#### R E A S O N S :

## R E A S O N S:

I. An Information for an Offence is a Surmise or Suggestion upon Record, on Behalf of the King, to a Court of Criminal Jurisdiction, and is, to all Intents and Purposes, the Suit of the King; and it will be difficult to assign a Reason, why his Majesty should not have equal Liberty with the Subject, of commencing and prosecuting his Suits, by those Persons whom he thinks fit to confide in and employ.

The Attorney and Solicitor General are invested, by their Office, with general Authorities, to commence and prosecute the Suits of the Crown: It is true, the Attorney General, as the superior Officer, has the Direction and Controul of his Majesty's Prosecutions, in which the Solicitor General seldom interferes; but it is equally true, that during the Vacancy of the Office of Attorney General, all the Suits of the Crown, both Criminal and Civil, are commenced, prosecuted, and carried on by the Solicitor General.

II. At the Time this Information was filed against Mr. *Wilkes*, the Office of Attorney General was vacant, and consequently the Solicitor General was the proper Officer to exhibit it; but it has been, and probably will again be, contended by the Plaintiff in Error, that the Fact of the Vacancy ought to appear upon the Record. The only Pretence for such Averment is to inform the Court of the Vacancy, as an Inducement to receive the Information from the Solicitor General: But there is no Necessity for that Intelligence; the Attorney General is, in Truth, an Officer of, and has a Place in, the Court of *King's Bench*, and the Court will take Notice of the Vacancy of the Office; and there are a Multitude of Instances of Suits commenced and prosecuted by the Solicitor General on the Behalf of the Crown, without any Averment or Notice taken of the Vacancy of the Office of Attorney General.

III. If the Circumstance of an Information being filed by the Solicitor General furnished any real Ground of Objection to the Prosecution, yet it is conceived that the Plaintiff in Error is now precluded from availing himself of it; it could at most amount only to an Irregularity, and the Remedy must have been by Application to the Court to have the Information taken off the File, or the Proceedings stayed: It could never be a Cause of Demurrer, or of an Arrest of Judgment, or a Ground of Error; and Mr. *Wilkes* having pleaded to the Offence, has waived any irregularity. Besides, the Solicitor General having, during the Suit, been appointed Attorney General, adopted the Information, joined Issue with the Plaintiff in Error, and prosecuted the Suit to a Conviction.

IV. The Third Error assigned is, upon a supposed Variance between the Record and the original Information; but the Fact does not warrant that Objection: And it is conceived, that the said supposed Error is so assigned, only for the Purpose of introducing into the Cause a Matter, which the Plaintiff in Error has thought proper frequently to allege as a Subject of Grievance and Complaint; and although there is not the least Colour for the Complaint, yet as the Manner, in which it has been urged, seems to touch upon the Honour of the Crown in the Administration of Justice, and highly to concern the Credit and Dignity of his Majesty's Court of *King's Bench*, it is greatly to be lamented that it cannot be brought judicially before your Lordships: The real Truth of the Case being nothing more than this, That by the Order of the Attorney General, a Summons was directed to be applied for, after Issue joined, and before the Trial, from One of the Judges of the Court in the usual Course of Business; and a Summons was accordingly applied for and obtained from the Right Honourable Lord *Mansfield*, for an Attendance, to shew Cause why the Information should not be amended, by altering the Word "Purport" for that of "Tenor" throughout the Information (except in the First Place) which, upon such Attendance by the Clerks in Court on both Sides, was accordingly ordered, and the Amendment made.

Mr. *Wilkes*'s Council made no Objection to this at the Trial, nor in the ensuing Term, as might have been done, and not till *Trinity Term 1768*, when that Amendment was made one Ground of a Motion in Arrest of Judgment; but as such an Objection could not be regularly made in Arrest of Judgment, the Court were pleased to give him Leave to make it upon a Motion for a new Trial; and the same being made accordingly, and it clearly appearing, that the Amendment was made in Conformity to a Multitude of Precedents, and to the constant Usage of the Court; and that it was not, and could not be, of any Prejudice to the Defendant; and that he himself, instead of complaining of it, as he might have done, had acquiesced under it; the Court unanimously over-ruled the Objection as a Point on which no Doubt could be entertained.

*For these and other Reasons to be offered at the Hearing, it is hoped the Judgment of the Court of King's Bench shall be affirmed.*

W<sup>M</sup>. DE GREY.  
E. THURLOW.

Jany 16<sup>th</sup> 1769.

XPEB 75. W 65-24.2 768g

The following Questions was put to the Judges.

Whether an Information filed by the King's Solicitor General during the Vacancy of the Office of the King's Attorney General is good in Law? Whether in such a Case it is necessary in point of Law to aver upon the Record, that the the Attorney General's Office was Vacant?

Upon the 2<sup>nd</sup> Record. Whether a Judgm't. of Imprisonm't. against a Def't. to commence from and after the determination of an Imprisonm't. to which he was before sentenced for another offence is good in Law?

Whereupon the Lord Chief Justice of the Court of Common Pleas having  
confer'd with the rest of the Judges present delivered their unanimous  
Opinion upon the said Questions.

To the 1<sup>o</sup>: That an Information filed &c. is good in Law.

2<sup>nd</sup>. That in such a Case it is not necessary &c.

3<sup>rd</sup> That a Judgm<sup>t</sup>. of Imprisonm<sup>t</sup>. &c. is good in Law.

Ord. & Adj. That the Judgm't of the Court of Enquiry be affirmed.

To be heard at the Bar of the House  
on Wednesday the 2d Day of Decem-

CASE for the CRE

**On the Information for printing and publishing  
a new Label, entitled, "The Nord P.  
C."**

of the Courts of King's Bench, and of the Exchequer.

W<sup>m</sup>. DE GREEY.  
E. THURSTON.